

156
No. 79

Office - Supreme Court, U. S.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1947.

UNITED STATES OF AMERICA, Appellant,

v.

PARAMOUNT PICTURES, INC., ET AL., Appellees.

**Appeal from the District Court of the United States for the
Southern District of New York.**

**PETITION FOR LEAVE TO FILE A BRIEF AS AMICUS
CURIAE IN BEHALF OF THE CONFERENCE OF
INDEPENDENT EXHIBITORS' ASSOCIATIONS.**

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CONTENTS.

	Page
I. Description of the Petitioner	2
II. Reasons for Granting Petition	3
III. Service of Petition and Brief and Attitude of Counsel	5
Attachment A. List of Associations Comprising the Conference of Independent Exhibitors' Associa- tions	7
Attachment B. List of Counsel upon whom Copies of This Petition and the Brief Were Served	9

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To the Honorable,

The Supreme Court of the United States:

Comes now the Conference of Independent Exhibitors' Associations, by its counsel, and respectfully petitions the Supreme Court of the United States for leave to file a brief

¹ The proffered brief has a bearing on all of the several appeals from the decree of the District Court, namely, Nos. 79, 80, 81, 82, 83, 84, 85 and 86 and copies of this petition and of the brief have been sent to counsel for all parties. Because the several appeals are to be heard together, and constitute one case, it was deemed sufficient to entitle the petition and brief only in No. 79, the Government's appeal.

as *amicus curiae* in the above-entitled cause; and in support of its petition it informs the Court as follows;

I. DESCRIPTION OF THE PETITIONER.

1. The Conference of Independent Exhibitors' Associations, for the purposes of this petition, represents 26 national and regional associations, with a combined membership of upwards of 4,000 independent motion picture theatres; that is to say, motion picture theatres which are not owned, controlled or operated by, or affiliated with, any producer or distributor of motion picture films.²

2. The Conference of Independent Exhibitors' Associations was formed primarily to represent the interests of the exhibitor members of its constituent associations in this litigation. The need for such action arises from the fact that those constituent associations constitute all or nearly all of the exhibitor associations which are exclusively composed of independent motion picture exhibitors, or which are exclusively under independent management or control.

3. All other exhibitor associations including those involved in Nos. 85 and 86, which are seeking to intervene, include among their officers and members affiliated exhibitors (i.e., theatre operators employed by or in partnership with one or more of the producer-distributors) and affiliated theatres (i.e., theatres owned or controlled by the producer-distributors). (Stenographer's minutes, Oct. 21, 1946, pp. 2873-2874.) Should the petitions of these putative intervenors be allowed, and there is an alignment according to interest, their affiliated members would necessarily be joined as parties defendant. The independent exhibitors cannot entrust their interests to such representation.

² The national and regional associations comprising the Conference of Independent Exhibitors' Associations are set forth in Attachment A, *infra* p. 7.

II. REASONS FOR GRANTING PETITION.

4. Although the Government in its original complaint sought to divest the appellees (hereinafter called "defendants") of their theatre holdings and to enjoin certain monopolistic practices, all of which would have been beneficial to the independent exhibitors, the lower court saw fit to ignore those traditional Sherman Act remedies and to substitute therefor a burdensome, complicated and unworkable system of judicial regulation for which there is no authority in law and which bears more heavily upon the independent exhibitors than it does upon the defendant producer-distributors and their affiliated theatre chains.

5. An extraordinary feature of the regulatory system imposed by the District Court is that it applies not only to situations where defendants' theatres compete with one another for films, or to situations where defendants' theatres compete with independent theatres, but actually extends to competitions between independent theatres which theatres are not parties to the suit or implicated in the charges of wrongdoing.

6. The independent exhibitors thus stand in the position of innocent bystanders. The Government has charged them with no wrong-doing and they are not implicated as willing participants in any of the unlawful actions denounced by the lower court. Yet under the lower court's decree the defendants' theatre monopoly, against which the Government complained, has been left virtually intact and there has been saddled upon the independent exhibitors a high degree of regulation which is not only burdensome in itself but will actually handicap them in their efforts to compete with the producer-owned chains.

7. In tendering its brief the Conference of Independent Exhibitors' Associations acts in subordination to the Attorney General who is charged by law with the duty of enforcing the Sherman Act. Act of July 2, 1890, 26 Stat. 209, Sec. 4; 15 U.S.C.A., Ch. 1, Sec. 4. The Conference by for-

mal action has approved and now supports the purpose of the Attorney General to secure the principal relief prayed for, namely, the complete, permanent and effectual separation of the production and exhibition branches of the motion picture industry. Such relief, in the opinion of the Conference, will open the screens of the great first-run affiliated theatres to new producers and distributors and thus restore competition in the motion picture industry; and will end the incentive to discriminate and thus halt the discrimination practiced by the defendants in favor of their own theatres and those of one another and against the independent theatres.

8. The pressing need for the submission of a brief in behalf of the independent exhibitors is not merely to support the Government's case—that is in competent hands—but to point out to the Court the impractical and unworkable features of the lower court's decree and how they adversely and unfairly affect the independent exhibitors. This need is emphasized by the fact that the Government rested its case upon documentary evidence and called no independent exhibitors as witnesses, the only oral testimony being that presented by the defendants in behalf of themselves and their affiliated chains. Thus while the record is teeming with testimony giving the defendants' version of industry conditions as revealed by the Government's exhibits, there are no interpretations or explanations to show affirmatively how those conditions affect the independent exhibitors.

9. More important than that is the fact that this Court is called upon to review a decree which sets up an elaborate system for regulating the entire motion picture industry, including the independent exhibitors. The production, distribution and exhibition of motion pictures is a complicated and peculiar business quite unlike any other. Films are leased (not sold) to different classes of theatres, for staggered runs, with varying time lapses between runs and upon a wide variety of terms and conditions, especially

as to the amount and methods of computing film rentals. Only the independent exhibitors, acting through their own associations and their own counsel, have the requisite experience and stimulus to point out to the Court wherein the lower court's decree bears unfairly and unjustly upon them.

10. Finally, in the event that this Court should decide that some measure of regulation similar to that provided by the lower court is justified as interim relief or otherwise, the Conference of Independent Exhibitors' Associations desires to offer concrete suggestions for making the decree as workable from a practical standpoint, and as little burdensome upon the innocent independent exhibitors, as possible.

III. SERVICE OF PETITION AND BRIEF AND ATTITUDE OF COUNSEL.

11. On December 10, 1947 a copy of the proffered brief was sent by registered mail to counsel in all eight appeals with the request that they consent to the filing thereof. Such counsel are listed in Attachment B, page 9 of this petition.

(a) Those Consenting.

Hon. Philip B. Perlman, Solicitor General of the United States, has consented in writing to the filing of the brief.

Hon. Thurman Arnold, counsel for the appellants in No. 85, advises that he has no objection to the filing of the brief and that he will so notify the Clerk.

(b) Those Not Consenting.

Simpson, Thacher & Bartlett, Esqrs., counsel for Paramount Pictures, Inc., appellant in No. 81, advise that their client is not willing to consent to the filing of the brief.

No word has been received from other counsel. Since counsel for the producer-distributor defendants opposed the filing of a brief in behalf of the independent exhibitors

in the District Court, it is presumed that they will also oppose the filing of such a brief in this Court.

A copy of this petition has been sent by registered mail to each counsel listed in Attachment B with notice that the petition and brief have been filed with the Clerk for presentation to the Court.

Respectfully submitted,

ABRAM F. MYERS,
Counsel for the Conference of Independent Exhibitors' Associations,
729 Fifteenth Street, N.W.,
Washington 5, D. C.

ATTACHMENT A.

List of Associations Constituting the Conference of Independent Exhibitors' Associations.

1. Allied States Association of Motion Picture Exhibitors, 729 15th St., N.W., Washington, D. C., a federation of independent exhibitor associations, with the following constituent bodies:

- (a) Independent Exhibitors, Inc. (of New England), 36 Melrose St., Boston, Mass., with members in Massachusetts, Maine, New Hampshire, Vermont and Rhode Island.
- (b) Allied Theatres of Connecticut, Inc., 902 Chapel Street, New Haven, Conn.
- (c) Allied Theatre Owners of New Jersey, Inc., 234 W. 44th Street, New York, N. Y.
- (d) Allied Independent Theatre Owners of Eastern Pennsylvania, Inc., 219 N. Broad St., Philadelphia, Pa.
- (e) Motion Picture Theatre Owners of Maryland, Inc., 531 N. Howard St., Baltimore, Md.
- (f) Allied Motion Picture Theatre Owners of Western Pennsylvania, Inc., 84 Van Braam Street, Pittsburgh, Pa.
- (g) West Virginia Theatre Managers' Association, 1632 Central Parkway, Cincinnati, Ohio.
- (h) Independent Theatre Owners of Ohio, 55 E. State St., Columbus, Ohio.
- (i) Allied Theatres of Michigan, Inc., Fox Theatre Building, Detroit, Michigan.
- (j) Associated Theatre Owners of Indiana, Inc., 444 N. Illinois St., Indianapolis, Indiana, with members in Indiana and Kentucky.
- (k) Allied Theatres of Illinois, Inc., 1325 S. Wabash Avenue, Chicago, Illinois.
- (l) Independent Theatre Owners of Wisconsin and Upper Michigan, 709 N. 11th Street, Milwaukee, Wis.
- (m) North Central Allied Independent Theatre Owners, Inc., 253 Loeb Arcade, Minneapolis, Minn., with members in Minnesota, North Dakota and South Dakota.

(n) Allied Independent Theatre Owners of Iowa-Nebraska, Inc., Eldora, Iowa.

(o) Allied Rocky Mountain Independent Theatres, 921 21st St., Denver, Colorado, with members in Colorado and Wyoming.

(p) Allied Theatre Owners of the Gulf States, 223 S. Liberty St., New Orleans, La., with members in Louisiana, Alabama, Florida and Mississippi.

(q) Allied Theatre Owners of Texas, 2011½ Jackson Street, Dallas, Texas.

2. Pacific Coast Conference of Independent Theatre Owners, 1914 S. Vermont Avenue, Los Angeles, Cal., a federation of independent exhibitor associations, including the following:

(a) Independent Theatre Owners of Southern California and Arizona, 1914 S. Vermont Ave., Los Angeles, Cal.

(b) Independent Theatre Owners of Northern California and Nevada, 369 Turk Street, San Francisco, Cal.

(c) Independent Theatre Owners of Washington, Northern Idaho and Alaska, 101 Battery St., Seattle, Wash.

(d) Independent Theatre Owners of Oregon, 1931 N.W. Kearney St., Portland, Ore.

(e) Montana Theatre Owners Association, Wolf Point, Mont.

(f) Independent Theatre Owners of Utah and Southern Idaho, Salt Lake City, Utah.

3. Unaffiliated Independent Exhibitors (of New York City), 625 Eighth Avenue, New York, N. Y.

ATTACHMENT B.**List of Counsel to Whom Copies of This Petition and the Proffered Brief Were Mailed.**

1. Philip B. Perlman, Esq., Solicitor General, Department of Justice, Washington, D. C., for the United States of America.
2. John W. Davis, Esq., 15 Broad Street, New York, N. Y., for Loew's, Inc.
3. Simpson, Thacher & Bartlett, Esqrs., 120 Broadway, New York, N. Y., for Paramount.
4. Donovan, Leisure, Newton & Lombard, Esqrs., 2 Wall Street, New York, N. Y., for R-K-O.
5. Joseph M. Proskauer, Esq., 11 Broadway, New York, N. Y., for Warner Bros.
6. Dwight, Harris, Koegel & Caskey, Esqrs., 100 Broadway, New York, N. Y., for 20th Century-Fox.
7. O'Brien, Driscoll & Raftery, Esqrs., 152 W. 42d St., New York, N. Y., for United Artists.
8. Schwartz & Frolich, Esqrs., 1450 Broadway, New York, N. Y., for Columbia.
9. Charles D. Prutzman, Esq., and Adolph Schimmel, Esq., 1250 Sixth Avenue, New York, N. Y., for Universal.
10. Thurman Arnold, Esq., Bowen Building, Washington, D. C., for American Theatres Association.
11. Paul Williams, Esq., 1914 S. Vermont Ave., Los Angeles, Cal., for Southern California Theatre Owners Association.
12. Robert T. Barton, Mutual Building, Richmond, Va., for Allred and others.